In the Supreme Court
OF THE
United States

October Term, 1950

No. 312

Supreme Court, U
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FRANK H. HOLLOWAY, EARL H. BELL, WILLIAM T. FAUGHNAN, OSCAR LARSON, BENNIE E. BONNINI, FRED W. EARL, FREDERICK A. LINDAUER, CARL F. LINDGREN, and BERT A. WADE, taxpayers, for themselves, and on behalf of all other taxpayers, and others,

Plaintiffs and Appellants,

vs.

C. H. PURCELL, as Director of the Department of Public Works and as ex-officio Officer and Chairman of the California Highway Commission, HARRISSON R. BAKER, HOMER P. BROWN, JAMES A. GUTHRIE, WALTER SANDELIN, C. ARNHOLT SMITH, and CHESTER H. WARLOW, as members of, and constituting the California Highway Commission, GEO. T. McCOY, as State Highway Engineer, C. H. WHITMORE, as District Engineer, E. R. HIGGINS, as Comptroller of the Department of Public Works, THOMAS H. KUCHEL, as State Controller, CHARLES G. JOHNSON, as State Treasurer, JOHN DOE and CECIL LOE,

Defendants and Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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No.....

FRANK H. HOLLOWAY, EARL H. BELL, WILLIAM T. FAUGHNAN, OSCAR LARSON, BENNIE E. BONNINI, FRED W. EARL, FREDERICK A. LINDAUER, CARL F. LINDGREN, and BERT A. WADE, taxpayers, for themselves, and on behalf of all other taxpayers, and others,

Plaintiffs and Appellants,

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Defendants and Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

To The Honorable Fred M. Vinson, Chief Justice of the United States, and to The Honorable Associate Justices of the Supreme Court of the United States:

Your Petitioners respectfully show:

I.

PETITION FOR WRIT OF CERTIORARI

Petitioners, as plaintiffs, on behalf of themselves as taxpayers, and on behalf of all other taxpayers in the County of Sacramento, and the State of California, respectively petition the Court to issue a writ of Certiorari to the Supreme Court of the State of California directing that there be certified to this Court for review that certain cause (Sac. No. 6039 State Supreme Court) in which judgment has been rendered and has become final therein.

II.

OPINIONS BELOW

The decision of the Superior Court, in the County of Sacramento, and State, and the judgment thereof (R. 45-65, 66). Decision of the Supreme Court of the State of California (R. 77, and reported in 35 A.C. 226).

III.

JURISDICTION

1. The jurisdiction of this Court is involved under Section 237 (b) of the Judicial Code, as amended (26 Stat. 828 (1891), as amended) 26 U.S.C. Section 344 (b).

2. The date of the judgment of the Supreme Court of California to be reviewed is April 25, 1950 (R. 77-93) to which a timely petition for rehearing therein duly filed (R. 94-103) was denied by order entered May 22, 1950 (R.

103). The time for filing this petition was extended by this court to September 19, 1950. (R. 112.)

3. The law of the State of California, the validity of which is drawn in question, is the resolution of the State Highway Commission adopted August 19, 1948. (R. Exh. C. p. 75), the resolution of the State Highway Commission adopted August 19, 1948. (R. Exh. D., p. 76), sections 23.5, 100.1, 100.3, 71, 72, 73, 75, 90, 193 and 825, respectively, of the Streets and Highways Code, Laws of the State of California. The jurisdictional statement is more fully set forth at pages 17 to 34 of the Brief in support hereof which is incorporated herein and by reference made 111, a part of this petition.

IV.

INTEREST OF PETITIONER

The interest of the petitioners in the subject matter of the complaint is the interest all taxpayers and landowners of the State of California have in preventing the illegal and wasteful expenditure of public funds. They assert the acts and threatened acts of the respondents are illegal and unconstitutional under the U. S. Constitution, and that therefore the expenditure of public monies in accomplishing these acts is wasteful and should be enjoined. They have the further interest in preventing the illegal removal of some 225 acres of valuable land from the tax rolls of Sacramento County which removal would result in an illegal increase in the tax burden which they and their real property would have to bear.

V.
CONSTITUTIONAL PROVISIONS INVOLVED

Article 1, sections 1 and 10, article IV, section 4, and the 14th amendment, in and to the United States Constitution, pertaining to the impairment of the obligation of contracts; the abridgment of the privileges or immunities of citizens of the United States, the depriving of due process of law, and the equal protection of the laws, and article IV, section 36, article XVI, sections 1 and 2, article I, section 10, article I, sections 13 and 21, and article I, section 1, all in the Constitution of the State of California relating thereto.

VI.
SUMMARY STATEMENT OF THE MATTERS INVOLVED

Article IV, section 36, of the Constitution of California authorized the Legislature to establish a system of State highways and to declare any road a State highway, and to pass all laws necessary or proper to construct and maintain the same, (R. 5). Pursuant to this authority the legislature enacted into law a statute chapter 387, pp. 647-652, Statutes 1909, entitled State Highway Act, Laws of the State of California, (R. 5). After its approval by the Governor in March, 1909, this was submitted to the people, as a bond act, pursuant to and in accordance with article XVI, section 1 of the State Constitution for ratification at the general election held in November, 1910. At this election said statute was ratified by a vote of the people and took effect December 31, 1910. The act provided for the issuance and sale of general obligation bonds of the state

in the sum of Eighteen Million Dollars ($18,000,000.00), which were payable into the state highway fund of the State Treasury, which fund was (R. 5) created by the act. The act further provided that a system of state highways in and for the State shall be constructed and acquired, as provided by law, by the Department of Engineering at a cost not to exceed the sum set forth in the act, which sum shall be used exclusively for the acquisition of rights of way, and the acquisition and construction of said system of State Highways (R. 5). Further, the act provided that the routes of said state highways shall be selected by the Department of Engineering and shall be so selected, laid out, and constructed or acquired as to constitute a continuous and connected state highway system (R. 6), and so far as involved in this action through the state traversing the Sacramento Valley between the city of Sacramento and the Oregon State line (R. 6, 7, 8-9), and which shall be *permanent in character* and be finished with oil, macadam, or such other material as in the judgment of the state agency named in the act shall be most suitable and best adapted to the particular locality traversed (R. 6). Also, the act provided that all highways constructed or acquired under the provisions of said act shall be *permanently maintained and controlled by the State of California,* and that said act shall be irrepealable until the principal and interest of the liabilities therein created shall be paid and discharged, and the Governor shall make a proclamation thereof (R. 7).

In about the year 1911, the then highway engineer together with a committee known as the Highway Commission acting as an agency of the Department of Engineering, selected, created, and designated the routes comprising the

State Highway System then established, and the route and routes therein selected and created were designated and numbered consecutively from 1 to 44 as State Highways (R. 7-8); and that Route 3, so designated was described as leading from Sacramento to the Oregon line by the way of Marysville, and the portion thereof in the County of Sacramento, occupied the then right of way of the county road known as "Auburn Road" running from Sacramento via 12 Mile House to "Sylvan Road," and occupying the then right of way thereof northerly to the north boundary of the County of Sacramento and continuing on for about one mile to the city of Roseville, in the County of Placer (R. 8, Exhs. A.C.), and which portion was officially approved and adopted under the terms of said act by the Department of Engineering, in the years of 1912-1915 (R. 8-9-10). It is a section of this portion of State Highway Route 3, extending from a point near Watt Avenue in Sacramento County to a point three-fourths (¾) mile south of Roseville, in Placer County (R. 10 Exh. C.) which the Respondents propose to alter and change the location and abandon the same as a state highway and Route 3, by the resolution of the Highway Commission adopted and passed by it on August 19, 1948 (R. 10 through 15, Exhs. B.C.), destroying the identity thereof, and substituting therefore a new supposed substitute state highway (R. 10 Exh. C.).

The state highway act of 1909-1910 is still and presently a valid and subsisting law not having been revoked or amended insofar as the matters herein are involved, and there remains outstanding and unpaid bonds in the approximate amount of five million two hundred thousand dollars ($5,200,000.00) (R. 16). Each bond purchased con-

tained the entire act of 1909-1910 set forth in *hec verba* including the statement of permanent character of the highway and the state's requirement of permanent maintenance and control.

The specific grounds of complaint of the Petitioners in the second cause of action is the adoption and passing of the Resolution of August 19, 1948, (R. 19 Exh. D. 76) by the Highway Commission, by which the Respondents attempt to declare the proposed new supposed substitute state highway to have the status of a "freeway" as the term is defined in section 1, chapter 687, p. 2203, Statutes of 1939, and enacted into the Streets and Highways Code as section 23.5, Laws of the State of California, as is opposed to a free public highway common to the use of all the people of a free government, as public highways always have been and are now understood to be according to the law of the land (R. 20); and that neither section 23.5, section 100.1 and section 100.3 embraced in chapter 687, Statutes of 1939, contain any objective standard for their application and administration, nor contain any purpose which is reasonably commensurate with the restraint on private property they make possible, but on the contrary tend to insulate private property from its environment, and result in a waste of public money, tend to impair vested property rights, and tend to discriminatory, arbitrary and capricious acts and restraints at the will and pleasure of the respondents and public officials (R. 21-22) in the control of public highways.

Petitioners sought a temporary restraining order restraining the respondents from carrying out any of the directions contained in each of the resolutions adopted and passed by

the Highway Commission on August 19, 1948, until a final hearing on the matters, and that upon the final hearing the injunctions be made permanent. (R. 23-25, 27-28.)

Respondents entered a general demurrer. After argument and the submission of briefs the trial court sustained said demurrer without leave to amend (R. 44) and judgment was entered accordingly. From this judgment respondents appealed to the Supreme Court of the State of California. Judgment therein affirmed.

The effect of the decisions of the Supreme Court of California was to impair the general obligation bonds and contract between the state and its electorate, or the state; its electorate and the bond holders, expressed in the state highway act of 1909-10; and, to impair vested property rights, arbitrarily and capriciously, without due process of law.

VII.

QUESTIONS PRESENTED

1. Upon the laying down and construction of the State Highway system, as selected, adopted and fixed pursuant to article IV, section 36, of the Constitution of California, and the legislative enactment, Chapter 383, p. 647, Statutes of 1909, as approved by the electorate of California; whether such an act of the legislature as approved by the people and based upon the mandate of section 1, article XVI of the State Constitution as the State Highway Act of 1909-1910 is a contract between the state, the electorate, and the bond holders; and whether it has, in whole or in part, been impaired or made ineffective by subsequent legislation.

2. Whether the portion of Route 3, between near Watt Avenue and three-fourths (¾) mile south of the City of Roseville in Sacramento and Placer Counties by the way of 12 Mile House and Auburn and Sylvan Roads having a local designation of road 111, Sac., Pla.-3, as selected, adopted and maintained as and constituting a part of the system of state highways is subject to material alteration and change in location and abandonment, by legislation subsequent to the state highway acts of 1909-1910.

3. Upon the state highways being established under the constitutional provision, section 36, Art. IV, of the state constitution, and the State Highway Act of 1909-1910; whether any one, or part of one, of the state highway routes, and in particular route 3, of the state highway system, as selected, adopted, and incorporated therein, by State Highway Act of 1909, can be established or constructed, or converted into the status of a freeway, as a freeway is defined in, and supposedly authorized by chapter 687, Statutes of 1939, and section 23.5 of the Streets and Highways Code, Laws of the State of California.

4. Whether section 100.1 contains an objective is a standard by which the Department of Public Works is to be governed, or invests arbitrary and capricious legislative power in public officials which may be used in an unrestrained and unregulated official discretion, and whether such section as invoked by respondents denies to the petitioners and other taxpayers equal protection of the law.

VIII.

REASON RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The Supreme Court of the State of California, has in this case decided Federal questions of substance not heretofore determined by the Supreme Court, or at least has decided them in a way not in accord with applicable decisions of this court (Supreme Court Rule 38 (5) (a)), which involve the important question of the impairment of the obligation of contract. (*William* vs. *Bluffy*, 96 U. S. 176). The law, State Highway Act of 1909, a bond act, (Appendix B, pp. i to vii) approved by a vote of the people, authorizes certain bonds to be issued, and certain work to be done upon specified conditions.* When these are accepted, a contract is entered into imposing the duties and creating the liabilities of the most carefully drawn instrument embodying the provisions. (*Louisiana* vs. *Pilsbury*, 105 U. S. 278, 288). All subsequent legislation must be subject to the act of 1909-1910, and sections 71, 72, 73, 100.1 and 100.3 of the Streets and Highways Code, Laws of the State of California,* passed by the legislature subsequent to the act of 1909-1910, take away vested property rights and rights of abutting owners, that were assured by dedication or deed to the property for public use, and which received additional status and importance by reason of the prior (county road, which they occupied) being converted into and becoming a state highway, which was to be permanently maintained and controlled by the State of California, under the act of 1909-1910, a contract and these acts *and each of them impaired the obligation of a contract.*

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* Article XVI, Section 1, Constitution of California. * Appendix, pp. i.

2. State courts should not be permitted by the simple device of holding that no contract exist to sanction the impairment of the obligation of contracts entered into between the State and the people, or the State and the bond holders, or the State, the electorate and the bond holders, and the constant surveillance of the Supreme Court is required to protect the constitutional guarantee of article 1, section 10 of the Constitution of the United States, particularly in the case of contracts of a statutory nature between the State, the electorate, and the bond holders, upon which the people rely in the duties and liabilities being carried out and the expenditure of public money. It must be remembered, that the State Highway Act of 1909-1910, is one adopted and passed by the legislature and submitted to and adopted by a vote of the people at a general election, in pursuance to section 1, article XVI, of the State Constitution, and therefor is a mandatory statute. In a reference to a statute to the people for acceptance or rejection, the representative is taking the opinion of the principal upon the necessity, policy or propriety of an act which is to govern the principal himself. *Simth* vs. *Janesville,* 26 Wis. 291; *Fell* vs. *State,* 40 Md. 71, Am. Rep. 83; *King* vs. *Reed,* 43 N.J.L. 186.

3. The case presents other questions of federal law relating to the meaning of the words "public highway" and "public use" in the 5th and 4th amendment to the Constitution of the United States, and which are involved in section 23.5, 100.1 and particularly in section 100.3 of the Streets and Highways Code, as embraced in chapter 687, p. 2203, Statutes of 1939, Laws of the State of California, known as the Freeway Act. If the meaning of the words

public highway and public use are to be employed as expressing the intention of the people at the time section 26, of article IV, of the State Constitution and the State Highway Act of 1909-1910, was adopted by them as words used in their common and ordinary meaning, then the fair inference is that the character of public highway and the use thereof as supposedly authorized in sections 23.5, 100.1 and 100.3 above to be constructed or established thereunder, as a freeway, is not within the preview of section 36, and the State Highway Act of 1909-1910, and that it was not within the intention of the legislature, as expressed in the act of 1909-1910, to impose upon the people, or create therein, a "freeway" as defined in section 23.5 of the Streets and Highways Code, or any other restricted type of public highway other than the highway and use understood in its enactment, and its adoption by the people, as containing a valid contract between the State, the electorate and the bond holders and any subsequent legislation to the contrary as in the sections and chapter mentioned above, must contravene article 1, section 10, of the Constitution of the United States in the impairment of the obligation of a contract, as well as under the pretense of regulation, takes away rights (abutters' rights) to make use in common with others of the public highways of the State, and thereby violate the due process and equal protection of the law clauses of the 14th amendment of the Constitution of the United States. Whether taking of a citizen's property is by "due process of law," is judged with respect to object of the taking, e.g. taxation, eminent domain, etc.; if suitable or admissible in special case, it is "due processs of law"; but if arbitrary, oppressive, and unjust, as is obvious from the

wording and construction of section 23.5, 100.1 and 100.3 and chapter 687, Statutes of 1939, supra, it is not (per Bradley) in *Davidson* vs. *Board of Advisors of New Orleans,* 96 U. S. 97, 108).

The sections and chapter of the law referred to go much farther in that section 4-100.3 thereof authorize the condemnation of the right of access (abbutters' rights). This section involves the federal question, can property be taken by proceeding in eminent domain, for other than public use? There can be a taking for a public use under this power only when in the nature of the case therein is or may be a public necessity for the taking. Where is the public necessity under this statute? It is unlike taking property for a public use which is already devoted to a different public use. There may be a necessity for that. But under the statute now in question section 100.1 provides: The department is authorized to so say and all things necessary to lay out, acquire and construct any section or portion of a State Highway as a freeway or to make any existing State Highway a freeway. The entire meaning and construction of the section is to an existing State Highway. The highway is already a public highway to be used by the public without distinction and without interruption or hindrances by any person for all purposes of passage by man, animals, and vehicles of all kinds, and for ingress and egress to and from abutting lands. These are constitutional rights guaranteed by the 14th amendment of the Constitution of the United States, and a free government. As to the rights of the owner of abutting lands, these were not obtained by grant or prescription, and cannot be lost by grant or prescription, use does not create

the rights and disuse cannot destroy them. They cannot be taxed. The analogy of the case is outlined in *Carpenter* vs. *Logan,* 16 Wall. 271-275. A thing is appurtenant to something else when it stands in relation to an incident to a principal and is necessarily connected with the use and enjoyment of the latter. (*Humphreys* vs. *McKissock,* 140 U. S. 313, 11 S. Ct. 779, 35th L.Ed. 473). All these rights are subject to the proper and reasonable regulation by the proper authorities under the police power, and hence there is no necessity for condemning these rights even if they were separate and unattached rights. The rights being incident to the land to which they are attached they are incapable of existence separate and apart from the particular land to which they are annexed, and then condemnation would be arbitrary, oppressive and unjust and the unnecessary and wilful waste of public money resulting in a burden on the petitioners as taxpayers and all other taxpayers. In its nature it is not a taking for a public use. For this reason it is obvious that the legislature could not authorize the taking of such rights by the State.

4. Under the implication inherent in the Constitution of the United States, each branch of the Federal Government and of state governments must remain separate. Any attempt to delegate legislative power of a state to its executive branch is therefore unconstitutional. But sections 100.1, 100.2, 23.5, 71, 72, and 73 of the Streets and Highways Code of the State of California constitute such a grant of legislative power, and are therefore unconstitutional. The respondents invoke the authority of these code sections in their acts and threatened acts. The unconstitutionality of these statutes was challenged in the complaint, but both

lower courts found that said complaint stated no cause of action. It should be pointed out that sections 100.1, 23.5, 72 and 73 contain no objective standard whatsoever, and that sections 100.2 and 71, set forth only the words "public interest." This court should grant the requested writ otherwise the Department of Public Works of the State of California will continue to enjoy this unconstitutional delegation of legislative power.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of California, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Supreme Court had in the case numbered on its docket Sac. No. 6039 to the end that this cause may be reviewed and determined by this court as provided for by the Statutes of the United States; and that the judgment of the Supreme Court of California be reversed by the Court, and for such other and further relief as to this Court may seem proper.

DATED: September 16, 1950, Sacramento, California.

Respectfully submitted,

DAROLD D. DECOE
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Defendants and Respondents.

BRIEF IN SUPPORT OF

PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE COURT BELOW

The decision of the Superior Court of the County of Sacramento, State of California and judgment thereof can be found at R. 45-65, 66. Decision of the Supreme Court of the State of California is reported in 35 A.C. 226 and is included at R. 77.

II.

JURISDICTION

A. THE FEDERAL QUESTION.

The constitutionality of the acts of the State Highway Commission and its threatened acts and the laws under which these acts were drawn in question in the original complaint wherein an equitable injunction was prayed for. Therein it was stated that said acts and threatened acts were contrary to the law in such cases made and provided (R. 13). Such law was pointed out in Appellants' Brief to be the Constitution of the State of California (Sec. 16, Art. I), and on Petition for Rehearing the untenable quality of these acts and threatened acts under the Constitution of the United States was specifically raised. (R. 97.)

The rule was stated in *Cross Lake Shooting & F. Club* vs. *Louisiana* (1911) 224 U. S. 632, as follows:

> " * * * when the state court either expressly or by necessary implication, gives effect to a subsequent law of the state whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such case it becomes our duty to take jurisdiction and

to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent laws."

Also see *Indiana Ex Rel Anderson* vs. *Brand* (1937), 303 U. S. 95.

But it has long been established that the acts of an Executive Body, or Commission are tantamount to a state law when the question of impairing contracts is involved.

Stevens vs. *Griffith*, 111 U. S. 48, 4 S. Ct. 283.

The Federal question is here presented because the acts complained of are in direct violation of the Act of 1909-1910 of the State of California (Appendix B, p. i). Therein the electorate was promised a permanent system of state highways, and was further promised that the State of California would permanently maintain and control the same. The electorate agreed to be taxed under these conditions * * * to meet the obligation of bonds to be issued. Purchasers of those bonds tendered their money in reliance on said promise, and all of these persons had the right to believe that the words of the statute would be interpreted in accordance with the case of *Coffee* vs. *Superior Court of Sacramento County*, 147 Cal. 535, wherein the word "control" and "manage" were held to be synonymous. (See also *United States* vs. *California*, 332 U. S. 19.)

But the acts complained of and the code sections supposedly authorizing said acts, are in violation of and repudiate these solemnly given promises. The acts attempt to summarily abandon a portion of said state highway system, and the statutes give the color of legality to "abandonment" or "relocation" or "substitution."

A further Federal question is raised in the complaint. (R. 21.) Therein the capricious and arbitrary and discriminatory nature of the acts of the respondents and the code sections under which they purport to act is pointed out. That the acts and code sections are clearly violative of Section I of the Fourteenth Amendment of the United States Constitution is set forth in Appellants' Petition for Rehearing (R. 99).

A further Federal question is raised in the complaint wherein it is alleged that the prescribed code sections contain no objective standard for their administration and application (R. 21).

B. INTEREST OF PETITIONERS.

Petitioners as taxpayers seeks to enjoin the wrongful and hence wasteful expenditure of public funds. This is authorized under Federal and State decisions even though petitioners do not show special damages in themselves.

Township of Franklin vs. *Tugwell,* 85 Fed. (2d) 208.
Gaston vs. State Highway Dept., 132 S.E. 680.

ARGUMENT

III.

THE ACT OF 1909-1910 AS APPROVED BY THE ELECTORATE OF CALIFORNIA AND AS INCORPORATED IN EACH BOND WHICH WAS ISSUED AND SOLD UNDER ITS AUTHORITY CREATED A CONTRACT BETWEEN THE STATE, THE ELECTORATE AND THE PURCHASERS OF SAID BONDS.

Lawson vs. *Kanawah County Court,* 80 W. V. 612, S. E. 786:

"Having granted this large sum of money from a condition plainly intended for promotion and conservation of interests highly important to themselves and expressed in perfectly plain words, the people cannot be deemed to have meant less than they said. There can be no bond issue without the assent of the voters. The court proposed the issue and the voter accepted the proposal, thus they came to an agreement. Having the power to withhold their consent, the voters can force the court to incorporate into the order such provisions as are satisfactory to them * * * The analogy between the mailing of this arrangement and a simple contract is very strong."

Perry vs. *City of Los Angeles,* 187 Cal. 753:

"But we are satisfied that a status analogous to such relation (contractual relation) was created through the exercise of the constitutional rights of the electors of said city in the approving the creation of the bonded indebtedness represented in these two bond issues upon the express assurances contained in the Act of 1901, which may not be changed, without working in effect a fraud upon the electors securing their vote for the

approval of these bonds upon terms and conditions which will not be kept if the attempted sale of these bonds below their par value is given the sanction of the court."

County of San Bernardino vs. *Way*, 18 Cal. (2d) 674:

"It is settled in California that upon the voting of bonds in connection with the amendment proceedings there arises between the state or its agencies and the taxpayers, certain contractual obligations which must be respected by any subsequent legislature or by any action on the part of public officials."

County of San Diego vs. *Hammond*, 6 Cal. (2d) 709:

"It is the settled lae of this State that bonds issued under improvement acts of this State constitute a contract on the landowners on the one hand and the bond holders on the other and that any attempt *by legislation or otherwise* to impair such contracts will be declared ineffective and invalid when tested by judicial proceedings."

Hale vs. *Iowa State Board*, 302 U. S. 95.

City of Redwood City vs. *Mayers*, 5 Cal. (2d) 283:

"If the Legislature had power to amend the Municipal Investment Bond Act so that this frozen investment might hereafter be used by the City for some municipal purpose, (some bonds having been issued and sold), the problem would be less complicated. However, *no such power is lodged in the Legislature.* The investment bonds constitute a contract between the municipality and the property owners and any attempt by the Legislature to impair the contract would be contra to the well established rules prohibiting such use of Legislative power."

IV.

UNDER SAID CONTRACT THE STATE OF CALIFORNIA BECAME OBLIGATED TO PERMANENTLY MAINTAIN AND CONTROL EVERY PORTION OF THE HIGHWAY CONSTRUCTED UNDER THE TERMS OF SAID ACT.

a. Since the electorate could have withheld its consent to such an act which results in additional taxation on the electorate each term and condition of the act must be strictly followed and complied with.

Brown vs. *Preston County Court,* 78 W. Va. 644, 90 S.E. 166:

> "Concrete, and none other was the vote of the people. It is not permissible to assume or conclude that this phrase so injected into the petition and order was understood to authorize the issuance of bonds for any other purpose than those particularly specified. Such an assumption is not warranted. It is wholly inconsistent with the specific language referred to."

Skinner vs. *City of Santa Rosa,* 107 Cal. 464: Here, bonds were voted on by the electorate of the City, and in the act it was provided that interest on the bonds would be paid annually. The City was unable to sell said bonds and made an offer to sell them with interest computed semi-annually. The court enjoined the sale and on appeal this injunction was affirmed. It was held that the change in the payment of interest was a substantial variation from the original authorization by the people and therefore was illegal.

State vs. *Pratlow,* 45 S.E. (2d) W. Va.: Here, the county voters approved the issuance of 1,100,00 dollars worth of bonds for the construction of an airport. The

pertinent officials determined that the airport would be erected at the cost of $600,000.00 and began the construction. This construction was enjoined on the theory that the voters specifically approved an airport to be the size and quality calling for the expenditure of $1,100-000.00. The court pointed out that had the smaller amount been used, the bond issue might have been voted down; therefore, the act that was presumably an economy measure on the part of the administrating officials, was permanently enjoined.

b. It is not held that minor changes or alterations are precluded. They can be made as long as the identity of the highway in question is not destroyed, and as long as the road remains substantially the one laid out and adopted under the act.

Boykin vs. *State Highway Department,* 146 S. C. 483:

> "The route of the old road had to be followed as set forth in the act and a variance of from one to two miles did not constitute the old route," and (2) "Under the authority given to the State Highway Commission set forth above it nevertheless did not have the authority to relocate roads from routes prescribed by the Legislature. It stated that reasonable reference to the location of the old roadbed had to be given and that the variation of from one to two miles constituted a new and entirely different route and was not a relocation authorized by law."

State vs. *The Edison Portland Cement Co.,* 47 Atlantic 587 (N. J.): Here, the court was faced with an Act of the Legislature which provides a mode of altering short pieces of public road by vacating them or by realigning

the same or by substituting a new road therefor, but the court held that this Act did not authorize the laying out of an entirely new and different road so as to deprive a party of the use of the old one, and holding in effect that there was distinction between realignment of a highway and the construction of a new and different one.

Loew vs. *Brannan* 4 N.E. 580.

Jennings vs. *Saywer,* 189 S.E. 746.

c. It is not held that the state was forever precluded from adding to its system of highways as set up on the act of 1909-1910; but in adding to the system the original contractual duty of the state to maintain and control the original system must be respected.

V.

THE PETITIONERS' COMPLAINT CLEARLY ALLEGES A BREACH OF THIS OBLIGATION BY THE PASSAGE OF THE RESOLUTION BY THE HIGHWAY COMMISSION OF THE STATE OF CALIFORNIA ON AUGUST 19, 1948 (R. 10 THROUGH 15 AND EXHIBITS "B" AND "C").

a. This resolution purports to anathematize a portion of the legally established highway by simply lifting its identification and allowing it to settle on a completely new and different route. The effect of this is to remove this portion from the State Highway System in opposition to the state's clear duty to maintain and control the whole of said system.

b. The Supreme Court of the State of California in its decision ignored the plain and obvious meaning of the statute, and in so doing completely neglected to treat the "control" provision of said statute. How can a high-

way be "controlled" permanently if it is summarily expelled from the State Highway system.

c. From a pleading point of view this illegal abandonment was unequivocably alleged in the complaint (R. 13, lines 15 through 26).

d. Once a route and system of highways was adopted by the Highway Commission in compliance with said Act, then, all of said highways became a part of said Act, in that their locations and positions specified the general terms of the Act. This having been done, the obligation to permanently maintain and control those specific highways was obtained. This obligation cannot be fulfilled by the control and maintenance of a completely new portion of highway.

e. The word "permanent" as used in section 8, of Chapter 383, Statutes of 1909, is first noticed in the words reading as follows:

> "The highways constructed or acquired under the provisions of this act shall be permanent in character and be finished with oil or macadam or a combination of both * * * ."

Here, the word "permanent" falls within the category of Abstract Relations, under the classification "time" (long duration). "Durable, last, endure, stand, remain." (Roget's *Thesaurus of Eng. Wds. & Phrases,* Inter. Ed.)

The word "permanent" is used again in section 8, in a different sense. Thus,

> "All highways constructed or acquired under the provisions of this act shall be permanently maintained and controlled by the State of California."

Here, as before, the word falls within the category of Abstract Relations, but under the classification "change" (absence of change, stability) unchangeable; not to be changed (Roget's *Thes. Eng. Wds.* & *Phrs.*, supra); continuing in the same state, or without any change that destroys form or character; remaining unaltered or unremoved. (Webster's *Inter. Dict.*)

VI.

SECTIONS 23.5, 100.1 AND 100.3, ENACTED INTO LAW AS A PART OF CHAPTER 687, STATUTES OF 1939, AND THEREBY INCORPORATED INTO THE STREETS AND HIGHWAYS CODE, LAWS OF THE STATE OF CALIFORNIA, DEFINING A FREEWAY AND AUTHORIZING THE DEPARTMENT OF PUBLIC WORKS AND THE HIGHWAY COMMISSION TO MAKE OR CONVERT A STATE HIGHWAY, OR ANY PART OR SECTION THEREOF INTO A FREEWAY, SO DEFINED, IS REPUGNANT TO SECTION 36, OF ART. IV OF THE STATE CONSTITUTION, AS AN ATTEMPT TO RESTRICT THE MEANING OF "STATE HIGHWAY" AS THOSE WORDS ARE USED IN THE CONSTITUTION AND IN THE STATE HIGHWAY ACT OF 1909-1910.

The spirit and scope of the established law is, that the words used in a constitutional provision are to be constructed as they were understood prior to, and at the time of the adoption of the amendment to the constitution, for otherwise the constitution would alter as time passes.

Dartmouth College vs. *Woodward*, 17 U. S. (4 Wheat 518.

Farrington vs. *Tennessee*, 95 U. S. 679.

Stone vs. *Mississippi*, 101 U. S. 814.

The reason for this rule is simply that the preexisting law was part of the atmosphere that surrounded and sug-

gested the amendment and the amendment cannot be thoroughly understood if isolated from its causes.

> *Pasadena* vs. *Railroad Commission,* 183 Cal. 526, (192 Pac. 1060).

To quote the words of Chief Justice Coke, 2 Co. Inst. 308, "The prior law is the very lock and key to set open the windows of the amendment."

The distinction between a Freeway and a State Highway is to be found in the Statute law itself, section 23.5 and section 24 (Appendix C, p. xi). A comparison of these sections leaves no doubt as to each being a different kind of highway. The attempt to define or effect by change the meaning of a word used in the constitution is *ultra vires* the legislature and therefore, we contend that section 23.5 of the Streets and Highways Code, and any Resolution passed in pursuance thereto are, and each is unconstitutional and void as being contra to substantive due process of law to the 14th amendment of the Federal Constitution.

In *Holder* vs. *Hardy,* 169 U. S. 366, the Court said:

> "The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discrtion or whether its action be a mere excuse for an unjust discrimination, or the oppression, or the spoilation of a particular class."

In *Westinghauer* vs. *People,* 44 Mich. 265, 57 N.W. 87, the court held:

> "Of course the legislature can make their own definition for statutory purposes but this would not change the constitutional meaning."

It is hardly necessary to say that subsequent legislature could not change the meaning or effect of any part of the constitution: that instrument can only be changed by the combined action of the legislature and the people. If the legislature could by merely calling things by particular names, alter the constitutional provisions, it would be quite unnecessary to consult the people on the subject of amendment.

It is a cardinal rule in the interpretation of a constitution which needs no citation, that the instrument must be so construed as to give effect to the intention of the people who adopted it. This intention is to be sought in the instrument itself, and the apparent meaning of the words employed is to be taken as expressing this intention, unless such assumption would lead to absurdity, ambiguity, or contradiction. The words employed are to be taken in their natural and popular sense, unless they are technical, legal terms, in which case they are to be taken in their technical signification. The people at the time they passed section 36, Article IV, of the State Constitution, understood public highways, whether they be state or county, as being common to all the people, to use without distinction and without interruption or hindrance by any person for all purposes of passage by man, animals and vehicles of all kinds, and for ingress and egress to and from abutting lands, subject to the proper and reasonable regulation by the proper authorities under the police power of the State. Unless a public highway meets these conditions it will not bring the greatest benefit to the greatest number, or promote the kind of land development which produces the best living environment and enjoyment of property, and

meet the guarranty of the 14th amendment of the Federal Constitution. The mere fact that the constitution and laws of the United States have created a privilege, or gives an immunity, is itself sufficient to put it beyond the reach of unfriendly legislation. It is plain that state laws cannot impair what they cannot reach. (Cooley, *Principles of Const. Law,* p. 258; *Crandall* vs. *Nevada,* 6 Wall. 35.)

VII.

SECTION 100.1 OF THE STREETS AND HIGHWAYS CODE CONTAINS AN UNCONTROLLED DELEGATION OF POWER AND DISCRETION.

The Department of Public Works operating under section 100.1 (Appendix C, p. xii) is authorized to lay out, acquire, and construct any section or portion of a state highway as a freeway or to make any existing state highway a freeway. The uncontrolled power granted in this section is without prescribed limits, and the authorities who may exercise it can do so in the interest of some to the exclusion of others. Where the statute delegating legislative power fails to set forth sufficiently definite standards, the "uncontrolled delegation" will be held invalid. (*Schechter Poultry Corporation* vs. *United States,* 295 U. S. 495, 55 Ct. 837.) The theory is clearly expounded in the leading case of *Hampton & Company* vs. *United States,* 276 U. S. 394, 48 S. Ct. 348, and in *Domingues Land Corporation* vs. *Dougherty,* 196 Cal. 468.

People vs. *Parks,* 58 Cal. 624.

The difficulty with the present law is, that it does not provide, but that it is an attempt to confer upon the De-

partment of Public Works the right arbitrarily to determine any state highway, or any section or part thereof, existing prior to the enactment of the section or subsequently constructed and established a state highway, and thereby destroying or affecting vested property rights at a greatly added cost to the petitioners in this case as taxpayers and all other taxpayers of the State of California. There would be no necessity for such costs in the construction or the maintenance of a state (public) highway as provided in section 36, Article IV of the State Constitution (Appendix A, p. i) and section 24 of the Streets and Highways Code (Appendix C, p. xi) and such added costs would be a waste of public money and a burden on the Petitioners in this case as taxpayers and on all other taxpayers in the State of California.

VIII

SECTION 100.3 OF THE STREETS AND HIGHWAYS CODE (APPENDIX C, P. XII) PROVIDES FOR THE CONDEMNATION OF THE ACCESS RIGHTS OF THE OWNERS OF LAND ABUTTING ON A STATE HIGHWAY.

Under the Roman law those things which "public policy" deemed necessary and appropriate in spiritual and temporal affairs embraced the streets, highways, market places, the places where courts of justice were held, colleges, town houses, and other public places, title to which is held in the State, or the city, or the county, in trust for the people. (*Commercial Bank of New Orleans* vs. *City of New Orleans,* 17 La. Amm. 190, 197.) This brings up another important question, whether the rights or privileges of owners of land abutting on a public highway may be

extinguished by the exercise of the power of eminent domain. In Section 1, Art. V, Amendments to the Constitution of the United States, will be found the words "public use." "It is settled beyond all controversy that individual property can be compulsory appropriated by the public only for public use" (*Underwood* vs. *Bailey,* 59 N. H. 480, 481, *Dillon Mun. Corp.,* Sec. 460; *Cooley Const. Lim.,* 530.)

Howard Mills Co. vs. *The Schwarts Lumber Co.,* 7759, 99 Pac. 595.

Brown vs. *Gerald,* 100 Mc. 351, 61 Alt. 785, 15 Cyc. 581.

Allen vs. *Railroad Commission*, 179 Cal. 66, 68.

All the rights enjoyed by the abutting owner in a public highway are subservient to the rights of the public, which it has acquired by consent, purchase, or condemnation for public use, any one of which is a contract guaranteeing to the abutting owner the right of access, ingress and egress, subject to the paramount right of the public. Therefore, there can be no public necessity for condemning out such rights.

Sauer vs. *New York,* 206 U. S. 536.
Story vs. N. Y. R. Co., 90 N. Y. 122, 172.

The use of the public highways is regulated by the police power. (Cooley's *Prin. Const. Law* (2d) Ed., p. 238) and in *Jones vs. Briun,* 165 U. S. 180, 182, the court said:

"Embraced within the police power of a state is the establishment, maintenance, and control of public highways."

Bacon vs. *Walker,* 204 U. S. 311.

Miller vs. Board of Public Works, 195 Cal. 477.

Pacific Palisades Assn. vs. *Huntington Beach,* 196 Cal. 211.

From the foregoing law it is obvious the legislature is without power to enact legislation which authorizes the Department of Public Works, the Highway Commission, or any governmental agency, or any person or body of persons whatsoever, to exercise the power of eminent domain in the taking of access rights and ingress and egress of an abutting owner of land on a public highway, due to their inseparability from the abutting land.

In *Brooklyn, Union El. R. Co., et al (N. Y.)* 77 N.E. 615, the court held:

> "Easement of light, air, and access, appurtenances to real property abutting upon a public highway, are inseparable from the dominate estate, and upon a conveyance of the latter such easements pass to the grantee, notwithstanding the grantors attempted reservation of the same, or of any rights of action for the invasion or destruction thereof."
>
> Lewis' *Em. Dom.,* 2d Ed., 91e, pp. 174 to 177.
>
> "That which can only exist in connection with the land cannot be taken under a power to condemn." *Watson* vs. *Acquacknock Water Co.,* 36 N. J. L. 195; *DeCamp* vs. *Hibernia Underground R. Co.,* 47 N. J. L. (S. C. ebid.) 518.

Regulation is one thing and prohibition is another. Under sections 23.5, 100.1 and 100.3, supra, the Department of Public Works has the uncontrolled power to pro-

hibit any access to the land of an abutting owner on a state highway or limit such owner to as few or as many as in its uncontrolled judgment deemed necessary and if the owner should put up a protest, it could take away all his rights at one swoop by invoking the power of eminent domain under section 100.3. The owner has a choice between the rock and the whirlpool——an option to forego a privilege which may be vital to his livelihood or enjoyment of property or submit to a requirement which may constitute an intolerable burden.

Frost & Frost Trucking Co. vs. *Railroad Comm. of Calif.*, 271 U. S. 583, 46 S. Ct. 605 (593-607).

From the foregoing record, and the law, there can be no doubt that the legislation creating a freeway, is arbitrary, oppressive, and unjust, and violative of the due process of law clause of the 14th amendment of the Constitution of the United States, and therefore, sections 23.5, 100.1 and 100.3, and the resolution of the Highway Commission adopted and passed in pursuance thereof are and each is unconstitutional and void.

CONCLUSION

In conclusion, it is respectfully submitted that this Petition for Writ of Certiorari should be granted to the end that the erroneous judgment of the court below be

reversed and that the general demurrer pled in the trial court be overruled.

DATED: September 16, 1950, Sacramento, California.

Respectfully submitted,

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(Appendices A, B and C follow)

Appendices

A.

AMENDMENTS TO THE CONSTITUTION

SEC. 36. The Legislature shall have power to establish a system of State highways or to declare any road a State highway, and to pass all laws necessary or proper to construct and maintain the same, and to extend aid for the construction and maintenance in whole or in part of any county highway.

Article IV, section 36, Constitution of California
Adopted November 4, 1902.

B.

THE STATUTES OF CALIFORNIA

An act authorizing the construction, acquisition, maintenance and control of a system of state highways in the State of California; specifying the work, fixing the payments to be made by counties for moneys expended therein; providing for the issuance and sale of state bonds to create a fund for the construction and acquisition of such system; creating a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people.

(Approved March 22, 1909.)

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. A system of state highways in and for the State of California shall be constructed and acquired as and in the manner provided by law by the department of engineering of said state at a cost not to exceed eighteen million dollars. For the purpose of providing for the payment of the cost of the construction or acquisition of said system of said highways, the State of California is hereby authorized to incur an indebtedness in the manner provided by this act in the sum of eighteen million dollars.

Immediately after the issuance of the proclamation of the governor, as provided in section 11 of this act, the treasurer of the state shall prepare eighteen suitable bonds of the State of California in the denomination of one thousand dollars each, to be numbered from 1 to 18,000 inclusive, and to bear the date of the third day of July, 1911. The total issue of said bonds shall not exceed the sum of eighteen million dollars and they shall bear interest at the rate of four per cent per annum from the date of issuance thereof. The said bonds and the interest thereon shall be payable in gold coin of the United States of the present standard of value at the office of the treasurer of said state at the times and in the manner following, to wit: The first four hundred of said bonds shall be due and payable on the third day of July, 1917, and four hundred of said bonds in consecutive numerical order shall be due and payable on the third day of July in each and every year thereafter until and including the third day of July, 1961. The interest accruing on all of said bonds that shall be sold shall be payable at the office of the treasurer of the state on the third day of January and the third day of July of each and every year after the sale of the same. The interest on all bonds issued and sold shall cease on the day of their maturity and the said bonds so issued and sold shall on the day of their maturity be paid as herein provided and canceled by the treasurer of said state. All bonds remaining unsold shall, at the date of the maturity thereof be by the treasurer of the state canceled and destroyed. All bonds issued pursuant to the provisions of this act shall be signed by the governor of this state, countersigned by the state controller and endorsed by the state

treasurer, and the said bonds shall be so signed, countersigned and endorsed by the officers who are in office on the third day of July, 1911, and each of said bonds shall have the great seal of the State of California impressed thereon. The said bonds signed, countersigned, endorsed and sealed as herein provided, when sold, shall be and constitute a valid and binding obligation upon the State of California, though the sale thereof be made at a date or dates after the person so signing, countersigning and endorsing, or either of them, shall have ceased to be the incumbents of said office or offices.

SEC. 2. Appended to each of said bonds there shall be interest coupons so attached that the same may be detached without injury to or mutilation of said bond. The said coupons shall be consecutively numbered and shall bear the lithographed signature of the state treasurer who shall be in office on the third day of July, 1911. No interest shall be paid on any of said bonds for such time as may intervene between the date of said bond and the day of sale thereof, unless such accrued interest shall have been, by the purchaser of said bond, paid to the state at the time of such sale.

SEC. 3. There shall be provided in the general appropriation bill sufficient money to defray all expenses that shall be incurred by the state treasurer in the preparation of said bonds and in the advertising of the sale thereof, as in this act provided.

SEC. 4. When the bonds authorized by this act to be issued shall have been signed, countersigned, endorsed and sealed as in section one provided, the state treasurer shall

sell the same in such parcels and numbers as the governor of the state shall direct, to the highest bidder for cash. The governor of the state shall issue to the state treasurer such direction immediately after being requested so to do, through and by a resolution duly adopted and passed by a majority vote of the advisory board of the department of engineering. Said resolution shall specify the amount of money which, in the judgment of said advisory board shall be required at such time and the governor of the state shall direct the state treasurer to sell such number of said bonds as may be required to raise said amount of money and that said bonds shall be sold in consecutive numerical order commencing with the first four hundred thereof. The state treasurer shall not accept any bid which is less than the par value of the bond plus the interest which has accrued thereon between the date of sale and the last preceding interest maturity date. The state treasurer may at the time and place fixed by him for said sale continue such sale as to the whole or any part of the bonds offered to such time and place as he may at the time of such continuance designate. Before offering any of said bonds for sale, the said treasurer shall detach therefrom all coupons which have matured or will mature before the date fixed for such sale. The state treasurer shall give notice of the time and place of sale by publication in two newspapers published in the city and county of San Francisco and in one newspaper published in the city of Oakland, and in one newspaper published in the city of Los Angeles and in one newspaper published in the city of Sacramento once a week for four weeks next preceding the date fixed for such sale. In addition to the notice last above provided

for, the state treasurer may give such further notice as he may deem advisable, but the expenses and cost of such additional notice shall not exceed the sum of five hundred dollars for each sale so advertised.

There is hereby created in and for the state treasury a fund to be known and designated as the "state highway fund," and immediately after such sale of bonds the treasurer of the state shall pay into the state treasury and cause to be placed in said state highway fund the total amount received for said bonds, except such amounts as may have been paid as accrued interest thereon. The amount that shall have been paid at such sale as accrued interest on the bonds sold shall be by the treasurer of the state, immediately after such sale, paid into the treasury of the state and placed in the interest and sinking fund.

The moneys placed in the state highway fund, pursuant to the provisions of this section, shall be used exclusively for the acquisition of rights of way for and the acquisition and construction of said system of state highways. The route or routes of said state highways shall be selected by the department of engineering and said route shall be so selected and said highways so laid out and constructed or acquired as to constitute a continuous and connected state highway system running north and south through the state traversing the Sacramento and San Joaquin valleys and along the Pacific coast by the most direct and practicable routes, connecting the county seats of the several counties through which it passes and joining the centers of population, together with such branch roads as may be necessary to connect therewith the several county seats lying east and west of such state highway.

Moneys shall be drawn from said state highway fund for the purpose of this act upon warrants duly drawn by the controller of the state upon demands made by the department of engineering and audited by the state board of examiners.

SEC. 5. There is hereby appropriated from the general fund in the state treasury such sum annually as will be necessary to pay the principal of and the interest on the bonds, issued and sold pursuant to the provisions of this act, as said principal and interest becomes due and payable.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state as shall be required to pay the principal and interest on said bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

The treasurer of the state shall, on the first day of January, 1912, and on the first day of each July and the first day of each January thereafter transfer from the general fund of the state treasury to the interest and sinking fund such an amount of the money by this act appropriated as shall be required to pay the interest on the bonds theretofore sold, until the interest on all of said bonds so sold shall have been paid or shall have become due in accordance with the provisions of this act.

There is hereby created in the state treasury a fund to be known and designated as the "state highway and sinking fund." The treasurer of the state shall on the first day

of July of the year 1917, and on the first day of July, of each and every year thereafter in which a parcel of the bonds sold pursuant to the provisions of this act shall become due, transfer from the general fund of the state treasury to the said state highway sinking fund such an amount of the moneys appropriated by this act as may be required to pay the principal of the bonds so becoming due and payable in such years.

SEC. 6. The principal of all of said bonds sold shall be paid at the time the same becomes due, from thestate highway sinking fund, and the interest on all bonds sold shall be paid at the time said interest becomes due, from the interest and sinking fund. Both principal and interest shall be so paid upon warrants duly drawn by the controller of the state upon demands audited by the state board of examiners, and the faith of the State of California is hereby pledged for the payment of the principal of said bonds so sold, and the interest accruing thereon.

SEC. 7. The state controller and state treasurer shall keep full and particular account and record of all their proceedings under this act and they shall transmit to the governor in triplicate an abstract of all such proceedings thereunder with an annual report in triplicate, one copy of each to be by the governor, laid before each house of the legislature biennially. All books and papers pertaining to the matter provided for in this act shall, at all times, be open to the inspection of any party interested, or the governor, or the attorney general, or a committee of either branch of the legislature or a joint committee of both or any citizen of the state.

SEC. 8. The highway constructed or acquired under the provisions of this act shall be permanent in character and be finished with oil or macadam or a combination of both, or of such other material as in the judgment of the said department of engineering shall be most suitable and best adapted to the particular locality traversed. The state department of engineering, in the name of the people of the State of California, may purchase, receive by donation or dedication, or lease any right of way, rock quarry or land necessary or proper for the construction, use or maintenance of said state highway and shall proceed, if necessary, to condemn under the provisions of the Code of Civil Procedure relating to such proceedings any necessary or proper right of way, quarry or land. The department of engineering shall have full power and authority to purchase all supplies, material, machinery and to do all other things necessary or proper in the construction and maintenance of said highway, with the exeception of those public highways which have been permanently improved under county or permanent road division bond issues within three years prior to the adoption of this act; all public highways within this state lying within the right of way of said state highway as determined and adopted by the department of engineering shall be and the same shall become a part of the right of way of said state highway, without compensation being paid therefor; *provided* nothing herein contained shall require the state to maintain any highway along or on said right of way, prior to the completion or acquisition of the permanent improvements contemplated by this act. Whenever any money received from the sale of bonds, under the provisions of this act,

shall be expended in any county in this state, such county must pay into the state treasury such sum each year as shall equal the interest, at the rate of four per cent per annum, upon the entire sum of money expended within such county in the construction of said state highway, less such portion of said amount expended as the bonds matured under the provisions of this act, shall bear to the total number of bonds sold and outstanding. All highways constructed or acquired under the provisions of this act shall be permanently maintained and controlled by the State of California.

SEC. 9. This act, if adopted by the people, shall take effect on the thirty-first day of December, 1910, as to all its provisions except those relating to, and necessary for, its submission to the people and for returning, canvassing and proclaiming the votes, and to such accepted provisions this act shall take effect immediately.

SEC. 10. This act shall be submitted to the people of the State of California for their ratification at the next general election to be holden in the month of November, 1910, A. D., and all ballots at said election shall have printed thereon, and at the end thereof, the words "For the State Highway Act"; and in a separate line, under the same, the words "Against the State Highway Act." Opposite said lines there shall be left spaces in which the voters may make or stamp a cross to indicate whether they vote for or against said act, and those voting for said act do so by placing a cross opposite the words "For the State Highway Act", and all those voting against the said act shall do so by placing a cross opposite the words "Against the State

Highway Act." The governor of this state shall include the submission of this act to the people, as aforesaid, in his proclamation calling for said general election.

SEC. 11. The votes cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers, and if it appears that said act shall have received a majority of all the votes cast for and against it at such election, as aforesaid, then the same shall have effect as hereinabove provided and shall be irrepealable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof. But if a majority of the votes cast, as aforesaid, are against this act then the same shall be and become void.

SEC. 12. It shall be the duty of the secretary of state to have this act published in at least one newspaper in each county, or city and county, if one be published therein, throughout this state, for three months next preceeding the general election to be holden in the month of November, A. D. nineteen hundred and ten; the cost of publication shall be paid out of the general fund, on controller's warrants duly drawn for the purpose.

SEC. 13. This act shall be known and cited as the "State Highway Act."

SEC. 14. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

C.
STATUTES RELATING TO THE DIVISION OF HIGHWAYS AND THE DEPARTMENT OF PUBLIC WORKS

23.5. "Freeway" means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.

Added by Chapter 687, Statutes 1939.

24. As used in this code, "State highway" means any highway which is acquired, laid out, constructed, improved or maintained as a State highway pursuant to constitutional or legislative authorization.

71. The commission may alter or change the location of any State highway if in the opinion of the commission such alteration or change is for the best interest of the State.

Amended by Chapter 514, Statutes 1935.

72. The commission may abandon any easement or portion thereof which has been acquired for State highway purposes, and which by reason of change in location of a State highway, is no longer necessary for such purposes.

Amended by Chapter 514, Statutes 1935.

73. The commission may relinquish to any county or city any portion of any State highway within such county or city which has been superseded by relocation, for use as a county highway or city street, as the case may be. Relinquishment shall be by resolution, a certified copy of

which shall be filed with the board of supervisors or the city clerk, as the case may be.

Amended by Chapter 514, Statutes 1935.

100.1. The department is authorized to do any and all things necessary to lay out, acquire and construct any section or portion of a State highway as a freeway or to make any existing State highway a freeway.

Added by Chapter 687, Statutes 1939.

100.3. From and after the adoption of a resolution by the California Highway Commission declaring any section of State highway to be a freeway, the highway described in such resolution shall have the status of a freeway for all purposes of Section 100.2.

Such declaration shall not affect private property rights of access, and any such rights taken or damaged within the meaning of Article I, Section 14, of the State Constitution for such freeway shall be acquired in a manner provided by law.

No State highway shall be converted into a freeway except with the consent of the owners of abutting lands or the purchase or condemnation of their right of access thereto.

Added by Chapter 687, Statutes 1939.

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DENIED